

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 SHERRY L. LEDAKIS  
Deputy Attorney General  
4 State Bar No. 131767  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2078  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2011-711

12 **MICHAEL KEVIN POLLARD**  
13 **4253 View Place**  
14 **San Diego, CA 92115**  
**Registered Nurse License No. 547337**

**A C C U S A T I O N**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about August 27, 1998, the Board of Registered Nursing issued Registered  
23 Nurse License Number 547337 to Michael Kevin Pollard (Respondent). The Registered Nurse  
24 License was in full force and effect at all times relevant to the charges brought herein and expired  
25 on April 30, 2010, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

....

7. Section 2762(a) of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

....

8. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished

1 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
2 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant  
3 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
4 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply  
5 to the possession of any controlled substance by a manufacturer, wholesaler,  
6 pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,  
7 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician  
8 assistant, when in stock in containers correctly labeled with the name and address of  
9 the supplier or producer.

10 Nothing in this section authorizes a certified nurse-midwife, a nurse  
11 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own  
12 stock of dangerous drugs and devices.

13 9. Health and Safety Code section 11173, subdivision (a) states:

14 (a) No person shall obtain or attempt to obtain controlled substances, or  
15 procure or attempt to procure the administration of or prescription for controlled  
16 substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the  
17 concealment of a material fact.

## 18 COST RECOVERY

19 10. Section 125.3 of the Code provides, that the Board may request the administrative  
20 law judge to direct a licensee found to have committed a violation or violations of the licensing  
21 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
22 case.

## 23 DRUGS

24 11. Dilaudid, a brand name for Hydromorphone, is a Schedule II controlled substance as  
25 designated by Health and Safety Code section 11057, subdivision (d)(32), and is a dangerous  
26 drug pursuant to Code section 4022.

27 12. Pyxis is a trade name for the automated single-unit-dose medication dispensing  
28 system, which records information such as patient name, physician orders, date and time  
medication was withdrawn, and the name of the licensed individual who withdrew and  
administered the medication. Each user/operator is given a "user ID" code to operate the control  
panel. The user is required to enter a second code "PIN" number, similar to an ATM machine, to  
gain access to the medications. Sometimes only a portion of the withdrawn medication is  
administered to the patient. The portion not given to the patient is referred to as wastage. This  
waste must be witnessed by another authorized user and is also recorded by the Pyxis machine.

1 **FACTUAL ALLEGATIONS**

2 13. Between December 11, 2007 and December 14, 2007, Respondent was employed by  
3 K-Force, a nurse registry, and was working at Alvarado Hospital. During this time, Respondent  
4 unlawfully obtained and possessed Dilaudid, by diverting it from the hospital's inventory as  
5 follows:

6 **PATIENT # 1**

7 14. On December 11, 2007, Patient # 1 was admitted to the hospital through the  
8 Emergency Department for observation. This patient was admitted to telemetry for monitoring  
9 and assigned to Respondent. Respondent removed a 4 mg/ 1 ml syringe of Dilaudid for this  
10 patient at 9:21 p.m. as an over ride of the Pyxis machine, by documenting it was for acute pain.  
11 There was no physician order for this medication. The patient's pain level was recorded as 1 out  
12 of 10, with 1 being minimal pain and 10 severe. Twelve minutes later, Respondent indicated in  
13 the Pyxis system that the medication had been wasted.

14 **PATIENT # 2**

15 15. This patient was assigned to Respondent on December 12, 2007, with a diagnosis of  
16 congestive heart failure. Respondent removed a 4 mg/ 1 ml syringe of Dilaudid for this patient at  
17 7:08 p.m., as an override for acute pain. There was no physician order for this medication. The  
18 patient's documented pain level at the time of the removal from the Pyxis machine was a 1 out of  
19 10. Respondent indicated in the Pyxis system that the Dilaudid 4 mg was wasted at 7:29 p.m.

20 **PATIENT # 3**

21 16. This patient was assigned to Respondent on December 12, 2007. Respondent  
22 removed a 4 mg/ 1 ml syringe of Dilaudid for this patient at 6:53 p.m., as an override for acute  
23 pain. There was a physician order for 1 mg of Dilaudid every 8 hours as needed for pain. The  
24 patient's pain level was a 1 out of 10 at the time the medication was removed from the Pyxis  
25 machine. Respondent indicated in the Pyxis system that he wasted Dilaudid 4 mg at 7:32 p.m.  
26 Respondent removed a second 4 mg/ 1 ml syringe of Dilaudid for this patient at 10:29 p.m. and  
27 recorded the administration of 1 mg Dilaudid on the patient's chart.

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1           **PATIENT # 4**

2           17. This patient was assigned to Respondent on December 13, 2007. Respondent  
3 removed a 4 mg/ 1 ml syringe of Dilaudid for this patient at 7:01 p.m., as an override for acute  
4 pain. There was no physician order for this medication at the time Respondent removed the  
5 medication from the Pyxis machine. The patient's documented pain level was recorded as 1 out  
6 of 10. Respondent indicated in the Pyxis system that he wasted Dilaudid 4 mg at 7:25 p.m.

7           18. On or about December 12, 2007, Respondent was terminated from his employment at  
8 Alvarado Hospital.

9           19. On August 17, 2010, Respondent mailed in his license to the Board.

10                           **CAUSE FOR DISCIPLINE**

11                           (Illegal Possession of Controlled Substances)

12           20. Respondent is subject to disciplinary action under Code sections 2761, subdivision  
13 (a), and Health and Safety Code section 11173, subdivision (a) in that he obtained and possessed  
14 controlled substances by fraud, deceit or subterfuge. Respondent took drugs from the Pyxis  
15 machine without physicians' orders and without patient need, as set forth above in paragraphs 13  
16 through 18, above.

17                           **PRAYER**

18           WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
19 and that following the hearing, the Board of Registered Nursing issue a decision:

20           1. Revoking or suspending Registered Nurse License Number 547337, issued to  
21 Michael Kevin Pollard

22           2. Ordering Michael Kevin Pollard to pay the Board of Registered Nursing the  
23 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
24 Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: July 7, 2011

Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

SD2010702799